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SUPREME COURT OF THE UNITED STATES

LESLIE MILLER, INC. ..... *Appellant,*

v.

STATE OF ARKANSAS ..... *Appellee.*

APPEAL FROM SUPREME COURT OF ARKANSAS

JURISDICTIONAL STATEMENT

(a) The official report of the opinion delivered by the Supreme Court of Arkansas in this cause is *Leslie Miller, Inc.* v. *State of Arkansas,* MS opinion delivered July 4, 1955, Vol. 99 of Law Reporter, Page 701 of No. 20. Such opinion is set forth verbatim in the appendix hereto.

(b) The grounds on which the jurisdiction of this Court is invoked are as follows:

(i.)

The appellant was found guilty as charged on each of two counts of an information filed by the Prosecuting Attorney of Pulaski County, Arkansas, on behalf of the State of Arkansas. The information charged appellant with violating the provisions of Act 124 of 1939, as amended (Ark. Stats. 1947, Sections 71-701 to 71-721, inclusive), in that the appellant, without authority from the State Licensing

Board for General Contractors, (1) submitted a bid to the United States for the construction of certain facilities at a cost in excess of $20,000 on property owned, or leased, by the United States in Arkansas and (2) thereafter executed a contract to do said construction and entered into the performance of the contract. The appellant was fined $100 on each of the two counts of the information.

The case was tried without a jury upon stipulations of fact. As amended, the stipulations reveal that, during the periods here involved, appellant was not licensed to engage in contracting work in the State of Arkansas and had not applied for a license to do so as required by Act 124 of 1939, as amended. Although not licensed, the appellant submitted a bid to the United States for the construction of certain projects at a cost in excess of $20,000 on property owned by the United States in Arkansas. In due course, appellant's bid was accepted and contracts were formally executed in Pulaski County, Arkansas. Thereafter, the appellant began performance of its contract.

It is agreed that the lands on which the facilities are being constructed were purchased by the United States with the consent of the State of Arkansas, but that the United States has not accepted jurisdiction over the lands as provided in 40 U. S. C. 255.

It is further agreed that bids were received for the construction of these facilities from contractors licensed to engage in the contracting business in Arkansas, but that such bids were in excess of the bid of the appellant, who was the lowest responsible bidder. In addition, it appears that certain responsible bidders did not bid on the construction of these facilities because they were not licensed to engage in the contracting business in Arkansas.

In the trial of the case in the First Division of the Circuit Court of Pulaski County, Arkansas, the appellant pleaded not guilty, asserting that (1) Act 124 of 1939, as

amended, was not applicable to its activities in submitting its bid, procuring the contract, and performing work in compliance therewith, and (2) the application of the Act to it would be unconstitutional (a) by reason of the doctrine of implied intergovernmental immunity and (b) was in direct conflict with Federal law regulating procurement by the United States; and on appeal to the Supreme Court of Arkansas argued in its brief these same propositions. Therefore, the conviction of the appellant in the lower court and the affirmance of the conviction by the Supreme Court in spite of appellant's plea of not guilty and the assertion in both courts of the inapplicability and unconstitutionality of the application of the aforesaid Act to it is a declaration by each of said courts of not only the applicability of the Act to the appellant, but of its constitutionality.

(ii.)

(a) The date of the judgment of the First Division of the Circuit Court of Pulaski County, Arkansas, convicting and fining the appellant is the 1st day of April, 1955.

(b) The date of the opinion of the Supreme Court of Arkansas affirming the judgment of conviction of appellant is July 4, 1955.

(c) The date of the order of the Supreme Court of Arkansas denying the appellant's motion for rehearing of its decision is October 3, 1955.

(d) Notice of appeal to the Supreme Court of the United States was filed with the clerk of the Supreme Court of Arkansas on December 29, 1955.

(iii.)

The statutory provision believed to confer on this Court jurisdiction of appeal is Section 1257(2) of Title 28 of the United States Code.

(iv.)

The cases believed to sustain the jurisdiction of this Court are as follows:

Ableman v. *Booth*, 21 How. 506, 16 L. Ed. 169.

Alabama v. *King & Boozer*, 314 U. S. 1.

Arizona v. *California*, 283 U. S. 423.

Baltimore and Annapolis Railway Company v. *Lichtenberg*, 176 Md. 383, 4 A. 2d 734, appeal dismissed, 308 U. S. 525.

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Railway Mail Association v. *Corsi*, 326 U. S. 88.

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Western Union Telegraph Company v. *Pendleton*, 122 U. S. 347, 30 L. Ed. 1187.

White v. *Hart*, 13 Wall. 646, 20 L. Ed. 685.

Wilson v. *Cook*, 327 U. S. 491.

(v.)

The validity of Act 124 of the Acts of the General Assembly of the State of Arkansas of 1939, as amended (Ark. Stats. 1947, Sections 71-701 to 71-721, inclusive), as applied to the appellant is involved; and this Act and the amendatory act are set out verbatim in the appendix hereto.

(c) The question presented by this appeal is as follows: Whether appellant may constitutionally be convicted of engaging in business as a contractor without the authority of the State Licensing Board for General Contractors, for submitting a bid to the United States and executing and performing a contract with the United States for military construction in Arkansas, in violation of Act 124 of the Acts of the General Assembly of Arkansas of 1939, as amended (Ark. Stats. 1947, Sections 71-701 to 71-721, inclusive), (1) when the objects and purposes of the Act of protecting the public health, welfare, and safety are afforded by Federal statutes and regulations; (2) when the Arkansas statute impairs the exercise of Federal functions; and (3) when the Arkansas statute is inconsistent with Federal law regulating procurement.

(d) The appellant pleaded not guilty in the First Division of the Circuit Court of Pulaski County, Arkansas, on the ground that the aforesaid Act 124 of the Acts of 1939, as amended, (1) was not applicable to it and (2), if applicable, was in violation of the Constitution of the United States, for the reasons set forth in Paragraph (c) hereof, which reasons were also argued in its brief to the Supreme Court of Arkansas, as appears from the opinion of that Court set forth verbatim in the appendix hereto.

(e) The grounds upon which it is contended that the Federal question is substantial and which will show that the nature of the case and the ruling of the Supreme Court of Arkansas and the First Division of the Circuit Court of Pulaski County, Arkansas, bring the case within the juris-

dictional provisions heretofore relied upon ((b)(III.) hereof) and the cases heretofore cited to sustain the jurisdiction ((b)(IV.) hereof) and the reasons why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, are as follows:

As related to the exercise of sovereign powers of states as opposed to the exercise of Federal functions, the effect of the decisions cited in Paragraph (b)(IV.) hereof is that the property, functions, and instrumentalities of the Federal Government are immune from direct state regulation, but that state laws and regulations are applicable to those dealing with the Federal Government (not acting as the agent thereof) when the laws and regulations accomplish a purpose in connection with the exercise by the state of its reserved powers, and are not in conflict with Federal laws, even though the exercise of such reserve powers may incidentally and indirectly burden the Federal Government; but where the application of the state law or regulation, as in this instance, is not necessary to the accomplishment of the only intended purpose of protecting the welfare of its citizens who deal with construction contractors, and its application interferes with the performance of Federal functions and is in conflict with Federal laws and regulation, then the application of the state law or regulation is invalid.

Therefore, the application of Act 124 of the Acts of the General Assembly of Arkansas of 1939, as amended, to the appellant, under the facts here presented, by the First Division of the Circuit Court of Pulaski County, Arkansas, and the affirmation of its judgment of the Supreme Court of Arkansas, and its denial of appellant's motion for rehearing, presents a substantial Federal question and brings this case within the jurisdiction of this Court under

the statute mentioned in Paragraph (b)(III.) hereof and the decisions cited in (b)(IV.) hereof, requiring plenary consideration, with briefs on the merits and oral argument.

Respectfully submitted,

LEFFEL GENTRY,
825 Pyramid Life Building,
Little Rock, Arkansas,
Attorney for Appellant.

CERTIFICATE

I, Leffel Gentry, attorney for Leslie Miller, Inc., appellant, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 21st day of March, 1956, I served copies of the foregoing Jurisdictional Statement upon the State of Arkansas, appellee, by mailing a copy in a duly-addressed envelope with postage prepaid to the Honorable Tom Gentry, Attorney General of Arkansas, State Capitol Building, Little Rock, Arkansas, and W. J. Smith, Boyle Building, Little Rock, Arkansas, attorneys of record for the appellee.

Leffel Gentry

LEFFEL GENTRY

Attorney for Leslie Miller, Inc., Appellant.

APPENDIX

LESLIE MILLER, INC. ..... *Petitioners,*

v. No. 4807-8-9-10

STATE ..... *Respondents.*

1. Jurisdiction—lands acquired within a state by United States. —The provisions of Act 124 of 1939, providing for the licensing of contractors, *held* applicable to contracts for facilities on lands purchased or leased by the United States Government with the consent of the State of Arkansas but over which the United States had not accepted exclusive jurisdiction as provided in 40 U. S. C. A. 225.

2. Licenses—Constitutional Law, Inter-Governmental immunity from.—The fact that independent contractors have contracts with the United States Government to construct building on United States Government property, the exclusive jurisdiction of which has not been accepted by the United States as provided in 40 U. S. C. A. 255, does not grant to them an immunity from Act 124 of 1939 requiring them to procure a license before they can legally bid, contract or perform work on a contract in Arkansas in excess of $20,000.

Appeal from Pulaski Circuit Court, First Division; *Wm. J. Kirby*, Judge; affirmed.

Sherrill, Gentry & Bonner, for appellant.

Tom Gentry, Attorney General, *Thorp Thomas*, Assistant Attorney General, and *Mehaffy, Smith & Williams*, for appellee.

Warren E. Gurger, Asst. U. S. Attorney General, and *Osro Cobb*, U. S. District Attorney, *Amici Curiae*.

Lee Seamster, Chief Justice. In each of these cases the appellants were found guilty in Pulaski Circuit Court on each of two counts of an information filed by the Prosecuting Attorney of Pulaski County, Arkansas, on behalf of the State of Arkansas. The separate informations charged appellants with violating the provisions of Act 124 of 1939, as amended (Ark. Stats. 1947, §§ 71-701 to 71-721) in that each of the appellants, without authority from the Contractors Licensing Board, (1) submitted a bid to the United Seates for the construction of certain facilities at a cost in excess of $20,000 on property owned, or leased, by the United States in Arkansas and (2) thereafter executed a contract to do said construction and entered into the performance of the contract. In each case, appellants were assessed a fine in the sum of $100 on each of the two counts of the information.

The contract with appellant, Engineering Construction Corporation, is for construction of an Air National Guard installation in Sebastian County, Arkansas, on property leased from the City of Fort Smith for that purpose. The other appellants, Ramsey and Leftwich, Tecon Corporation and Leslie Miller, Inc., have contracts for construction of facilities at the Air Force Base in Pulaski County, Arkansas. All of the above contracts greatly exceed the statutory minimum of $20,000. It is agreed that the lands on which the facilities are being constructed were purchased or leased, by the United States with the consent of the State of Arkansas but that the United States Government has not accepted jurisdiction over the lands as provided in 40 U. S. C. A. 255.

In each of the instant cases, appellants expressly deny that Act 124 of 1939, as amended, is applicable to its activities in placing the aforesaid bids, procuring the contracts, and performing work thereunder. The appellants contend that the stipulation in each of the cases shows that the lands upon which the contract is to be performed for

the agency of the United States Government are either owned or leased by the United States or its agency for one of the purposes mentioned in Article 1, § 8, Paragraph 17, of the United States Constitution and the State by the provisions of § 10-1101 of the Arkansas Statutes, Anno., has consented to the acquisition by the United States of these lands, and has relinquished jurisdiction of the lands. The appellants rely upon the case of *Lynch* v. *Hammock*, 204 Ark. 911, 165 S. W. 2d 369, in which this Court stated: "We think it clear, under the above authorities, that the laws, supra, affecting the practice of medicine and surgery in Arkansas do not control and cannot apply to the rights of Dr. Lynch to practice on property, the jurisdiction over which has been surrendered to the United States, and the title to which property has been acquired by the United States by purchase."

There is nothing in this opinion to indicate that 40 U. S. C. A. 255 was called to this Court's attention at that time or that the statute was considered. On the other hand it is quite apparent that this Court, in deciding the Lynch case considered only two things: (1) had jurisdiction over the lands in question been surrendered by the State to the United States; and (2) had title to the property been acquired by the United States.

40 U. S. C. A. 255 provides in part as follows: "Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such

lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."

In the case of *Adams* v. *United States*, 319 U. S. 312, 87 L. Ed. 1421, the U. S. Supreme Court stated: "Since the Government had not given the notice required by the 1940 Act, it clearly did not have either exclusive or partial jurisdiction over the camp area . . . Since the Government had not accepted jurisdiction in the manner required by the Act, the Federal Court had no jurisdiction of this proceeding. In this view it is immaterial that Louisiana statutes authorize the Government to take jurisdiction, since at the critical time the jurisdiction had not been taken." The opinion in the Lynch case was delivered on November 9, 1942. The Adams case was decided on May 24, 1943.

There can be no argument to the well settled principle that state sovereignty is complete except as clearly abdicated to the Federal Government by the Federal Constitution or by legislative act of cession. Therefore, state sovereignty is presumed in the absence of clear and explicit constitutional or legislative enactment to the contrary.

The appellants next contend that Ark. Stats., §§ 71-701 to 71-721, directly interferes with the performance of federal functions and cannot, therefore, under the doctrine of implied inter-governmental immunity, constitutionally apply to appellants' activities herein. It is contended that the enforcement of the provisions of the Act is in contravention of the sovereign power of the United States, as Article 4, § 3, Clause 2, of the Constitution of the United

States expressly grants to Congress the power to make all needful rules and regulations respecting property belonging to the United States.

The facts in these cases clearly show that the appellants are independent contractors. The fact that each appellant had a contract, in excess of $20,000 with the United States to construct buildings on United States Government property does not grant to them immunity from the State's law (Ark. Stats., §§ 71-701 to 71-721) which requires contractors to procure a contractor's license before they can legally bid, contract or perform work on a contract, in Arkansas.

The United States Government is not a party to this suit, nor are the appellants herein, agents or representatives of the United States Government. An independent contractor is not clothed with governmental immunity solely because of his contractual relationship with the Federal Government. A tax imposed upon an independent contractor is not laid upon a government instrumentality. *Ernest K. James* v. *Dravo Contracting Co.*, 302 U. S. 134, 82 L. Ed. 155, 58 S. Ct. Rep. 208; *Metcalf and Eddy* v. *Mitchell*, 269 U. S. 514; *Alabama* v. *King and Boozer*, 314 U. S. 1; *Graves* v. *New York, ex rel. O'Keefe*, 306 U. S. 466.

By analogy to these tax cases, state regulation of independent contractors has also been sustained in the face of increased economic burdens passed on indirectly to the Government by the independent contractors. *Penn Dairies* v. *Milk Control Commission*, 318 U. S. 261; *Stewart & Co.* v. *Sadrakula*, 309 U. S. 94; *Railway Mail Ass'n* v. *Corsi*, 326 U. S. 88; *E. E. Morgan Co., Inc.*, v. *State, Use Phillips County*, 202 Ark. 404, 150 S. W. 2d 736; *Sollitt & Sons Construction Co.* v. *Commonwealth of Virginia*, 172 S. E. 290; *Ohio River Contract Co.* v. *Gordon*, 244 U. S. 68, 37 S. Ct. 599, 61 L. Ed. 997.

Since the appellants admit that they have violated the provisions of the Act, if the Act is applicable to them, we must therefore affirm the judgment of the trial court in each of the above cases.

ACT 124 of the Acts of the General Assembly of Arkansas for the Year 1939.

AN ACT to Regulate the Practice of General Contracting in the State of Arkansas: Creating and Establishing a State Licensing Board for General Contractors: Defining the Term "General Contractor," as Herein Used: Providing for the Appointment of Said Board, and for the Issuance of Licenses to General Contractors, as Well as for Said Board's Revocation of Said Licenses: Authorizing the Fixing of Reasonable Fees to Be Paid by Licensees for the Purpose of Defraying the Costs or Issuing Licenses Hereunder: Providing for Court Review of Adverse Ruling of Said Board: Prohibiting Engaging in Business as General Contractor Without First Complying With the Provisions of this Act: Fixing Penalties for the Violation of This Act; and Repealing All Laws, or Parts of Laws in Conflict Therewith, and for Other Purposes.

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That for the purposes of this Act a "General Contractor" is defined to be any person, firm, partnership, co-partnership, association, corporation, or other organization, or any combination thereof, who for a fixed price, commission, fee or wage attempts to or submits a bid or bids to construct, or undertakes to construct, or assume charge of the construction, erection, alteration, repair, or have constructed, erected, altered, or repaired, under his, their or its direction, any building, highway, sewer, grading, or any improvement or structure when the cost of the undertaking is Ten Thousand Dollars ($10,000.00) or more, and one who shall engage in the construction or

superintending the construction of any structure or any undertaking or improvements, as above mentioned in the State of Arkansas, costing Ten Thousand Dollars ($10,000.00) or more, shall be deemed to have engaged in the business of general contracting in the State of Arkansas, provided that this definition shall not include architects or engineers, whose only financial interest in the projects shall be the architectural or engineering fees for preparing plans and specifications, surveys and supervision.

SECTION 2. That there is hereby created a State Licensing Board for General Contractors, consisting of five (5) members, who shall be appointed by the Governor. Each member shall be at least thirty-five (35) years of age, a resident of the State of Arkansas, and a general contractor of not less than ten (10) years' experience in responsible charge of construction projects of magnitude consistent with the duties of his office. At least one member of such Board shall have had as a larger part of his business the construction of highways. At least one member of such Board shall have had as a larger part of his business the construction of sewers and waterworks. At least one member of such Board shall have had as larger part of his business the construction of buildings. The members of the Board shall be appointed for one, two, three, four, and five years, respectively, their terms expiring on the 31st day of December of said year. Thereafter in each year the Governor shall appoint to fill the vacancy caused by expiration, for a term of five years. Each member shall hold over, after the expiration of his term, until his successor shall be duly appointed and qualified. If a vacancy shall occur in the Board for any cause, same shall be filled by appointment by the Governor, and the Governor may remove any member of the Board at any time for misconduct, incompetency or neglect of duty.

SECTION 3. That each member of the Board shall receive a certificate of appointment from the Governor,

and, before entering upon the discharge of the duties of his office, shall file with the Secretary of State the constitutional oath of office Each member of the Board first created shall receive a license to operate as a general contractor under this Act from the Governor, and thereafter no one shall be eligible for appointment on the Board who does not at the time hold an unexpired license to operate as a general contractor in Arkansas under this Act, and who has not been a bona fide resident of Arkansas for the previous five (5) years, and at the time of appointment does not maintain his general office in Arkansas. The Board, or any Committee thereof, shall be entitled to the services of the Attorney General, or the Legal Department of the State, in connection with the operation of the affairs of the Board. Such additional legal counsel, however, may be employed by the Board from time to time as it may deem necessary.

SECTION 4. That the Board shall, within thirty (30) days after its appointment by the Governor, meet in the City of Little Rock at a time and place to be designated by the Governor, and at said meeting shall elect a Chairman, Vice-Chairman, and Secretary each to serve in his respective capacity for one year, and thereafter said officers shall be elected by said Board annually. Said Board shall have power to make such by-laws, rules, and regulations for its operation as it shall deem best; provided the same are not in conflict with the laws of the State of Arkansas. The Board shall adopt a seal for its own use. The seal shall have on it the words, "Arkansas State Licensing Board for General Contractors, Seal," and the Secretary shall have charge, care and custody thereof. That within sixty (60) days after the Board has been organized, it shall meet for the purpose of receiving applications for certificates to engage in the business of general contracting, and for the transaction of such other business as may come before it, and thereafter shall have two (2) regular meetings in each

year; one in the month of February, and one in the month of August, for the purpose of transacting such business as may properly come before it, or call of the Chairman of the Board. Special or adjourned meetings may be held at such time as the Board may provide by the by-laws which it shall adopt, or at such time as the Board may, by reasonable resolution, provide. Due notice of each meeting and the time and place thereof shall be given to each member in such manner as the by-laws shall provide. Three (3) members of the Board shall constitute a quorum. All meetings of the Board shall be held in Little Rock, Arkansas.

SECTION 5. The Secretary shall keep a record of the proceedings of said Board, and shall receive and turn over to the Treasurer of the State of Arkansas all moneys derived from the operation of this Act, and shall draw and certify all vouchers for expenses incurred by the Board. The said vouchers shall be countersigned by the Chairman of the Board, and drawn to the Auditor of the State of Arkansas who shall issue warrants to the Treasurer of the State of Arkansas for the payment of such certified expenses. All moneys received by the State Treasurer shall be kept by him as a separate fund styled "General Contractor's Fund." The Secretary shall give bond in such sum as the State Treasurer shall determine with such surety company as shall be approved by the State Treasurer, said bond to be conditioned upon the faithful performance of the duties of his office, and upon the faithful accounting of all moneys and other properties which shall come into his hands.

SECTION 6. That each member of the Board shall receive Ten Dollars ($10.00) per day while said Board is in session, and reimbursement for necessary traveling expense, board and lodging. The Board shall be further empowered to employ an Assistant Secretary who is qualified to report the proceedings had before and by the Board, and whose salary shall not exceed the sum of Eighteen Hun-

dred Dollars ($1,800.00) per year. All expenses incurred by the Board for Administration of this Act are hereby authorized to be paid by the Board.

SECTION 7. That the Secretary shall keep a register of all applications for license showing for each the date of application, name, qualification, place of business, place of residence, and whether the license was granted or refused, as well as a complete transcript of the proceedings, including evidence submitted by applicants, licensees, the Board, or otherwise, at any hearing. The books and register of this Board, including transcripts of proceedings, shall be prima facie evidence of all matters recorded therein, and a certified copy of such books or register, including transcript of proceedings, under the seal of the Board, attested by its Secretary, shall be received in evidence in all courts of the State in lieu of the original. A roster showing the names and places of business and of residence of all licensed general contractors shall be prepared by the Secretary of the Board as soon as convenient, and not more than ninety (90) days after the Board shall have organized, and during the month of January of each succeeding year. Such roster shall be ordered printed by the Board and paid for out of the funds herein appropriated for the operation of this Act. On or before the first day of March of each year, the Board shall submit to the Governor a report of its transactions for the preceding year, and shall file with the Secretary of State a copy of such report, together with a complete statement of receipts and expenditures of the Board attested by the affidavit of the Chairman and Secretary, and copy of said roster of licensed general contractors.

SECTION 8. That any one, other than members selected by the Governor as hereinbefore provided, hereafter desiring to be licensed as a general contractor in this State shall make and file with the Board thirty (30) days prior to any regular or special meeting thereof, a written applica-

tion on such form as may then be by the Board prescribed, for examination by the Board, said application to be accompanied by a certified check in the sum of Fifty Dollars ($50.00) payable to the Arkansas State Licensing Board for General Contractors. If said application complies with the Board's rules and regulations, then the applicant shall be entitled to an examination to determine his, their, or its qualifications. If the result of the examination of any applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to engage in general contracting in the State of Arkansas. Any person thus receiving a certificate of license from the Board shall forthwith have it recorded in the office of the Secretary of State, and the date of recording shall be evidenced thereon. Until the license is recorded, the holder thereof shall not exercise any of the rights or privileges therein conferred, and in case such license is not recorded within sixty (60) days from the date of its issuance it shall become invalid. The Secretary of State shall be paid a fee of $1.00 for recording said certificate, and shall keep in a book to be provided by him for that purpose a complete list of certificate of license recorded by him, together with the date of each, and the date of recording. Any applicant failing to pass the examination prescribed by the Board shall be entitled to the refund of his, their or its fee accompanying the application. Any one failing to pass such examination may be re-examined at any regular meeting of the Board upon payment of regular fee. The certificate of authority to engage in the business of general contracting in the State of Arkansas shall expire the last day of December following the issuance or renewal, and shall become invalid on that date unless renewed. A fee of Fifty Dollars ($50.00) payable at the time of the filing of the application, as hereinbefore provided, shall be assessed against each applicant, and thereafter an annual license fee in the sum of Fifty Dollars ($50.00) shall be paid by each

Licensee to defray the costs and expenses of the operation of this Act.

SECTION 9. That the Board, in determining the qualifications of any applicant for original license, or any renewal license, shall, among other things, consider the following: (a) experience, (b) ability, (c) character, (d) the manner of performance of previous contracts, (e) financial condition, (f) equipment, (g) any other fact tending to show ability and willingness to conserve the public health and safety, and (h) default in complying with the provisions of this Act, or any other law of the State. A record shall be made and preserved by the Board of each examination of applicant or licensee, and the findings of the Board thereon, and a certified copy of the record shall be furnished to any applicant or licensee desiring to appeal from the findings of said Board, as hereinafter provided, upon payment of the costs of transcribing such record.

SECTION 10. That the Board shall have power to limit the license to that character of work for which the applicant is qualified.

SECTION 11. That the Board shall have the power to revoke the certificate of license of any general contractor licensed hereunder who is found guilty of any fraud or deceit in obtaining a license or for gross negligence, incompetence or misconduct in the conduct of his, their, or its business. Any person may prefer charges of such fraud, deceit, negligence or misconduct against any general contractor licensed hereunder. Such charge shall be in writing and sworn to by the complainant and mailed to the Board. Such charges, unless dismissed without hearing by the Board as unfounded or trivial, shall be heard and determined by the Board within thirty days after the date on which they were made. A time and place for such hearing shall be fixed by the Board and held in the City of Little Rock, County of Pulaski, and State of Arkansas. A copy

of the charges, together with the notice of the time and place of hearing, shall be considered as legally served by the Board when sent to the last known address of the accused by registered mail, at least ten days before the fixed date for the hearing, and in the event that such service cannot be effected ten days before such hearing, then the date of hearing and determination shall be postponed as may be necessary to permit the carrying out of this condition. At said hearing the accused shall have the right to appear personally and by counsel, and to cross-examine witnesses against him, them or it, and to submit evidence in his, their or its behalf and defense. If after said hearing the Board finds the facts as alleged and of such character as to disqualify the licensee, then the Board shall revoke the license of the accused, but in such event no refund shall be made of the license fee. The Board may, within its discretion and upon proper application or hearing, reissue a license to any person, firm or corporation whose license has been revoked. The Board shall immediately notify the Secretary of State of its findings in the case of a revocation of a license, or of a reissuance of a revoked license. A certificate of license to replace any certificate lost, destroyed or mutilated may be issued subject to the rules and regulations of the Board.

SECTION 12. That the issuance of a certificate of license by this Board shall be evidence that the person, firm or corporation named therein is entitled to all of the rights and privileges of a licensed general contractor while the said license remains unrevoked or unexpired.

SECTION 13. That any person, firm or corporation not being duly authorized, who shall engage or attempt to engage in the business of general contracting in this State, except as provided for in this Act, and any person, firm or corporation presenting or attempting to file as their own the license certificate of another, or who shall give false or forged evidence of any kind to the Board, or to

any member thereof, in obtaining a certificate of license, or who shall impersonate another, or who shall use an expired or revoked certificate or license, shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not less than One Hundred Dollars ($100.00), nor more than Two Hundred Dollars ($200.00), for each offense, each day to constitute a separate offense.

SECTION 14. That in all prosecutions for violations of the provisions of this Act for engaging in the business of general contracting without a certificate of authority, it shall be sufficient to allege in the indictment, affidavit or complaint that "A. unlawfully engaged in business as a general contractor, without authority from the State Licensing Board for General Contractors so to do."

SECTION 15. That the following shall be exempted from the provisions of this Act: The practice of general contracting as defined in Section 1 of this Act by an authorized representative or representatives of the United States Government, State of Arkansas, incorporated town, city or county, or other political subdivision in this State.

SECTION 16. That a corporation or partnership may engage in the business of general contracting; provided, at least one of the principals of such corporation or partnership is in responsible charge of such business and is licensed as herein required of general contractors.

SECTION 17. That when any contractor not being licensed by this Board in accordance with the provisions of this Act, shall engage, or attempt to engage, in the business of general contracting as herein defined, the Board shall have the right to go into the proper court in the jurisdiction in which the work is being performed, and upon affidavit secure a writ of injunction, without bond, restraining and prohibiting the said contractor from performance of the work then being done, or about to commence.

SECTION 18. That all architects and engineers preparing plans and specifications for work to be contracted in the State of Arkansas shall include in their invitation to bidders and in their specifications a copy of this Act, or such portions thereof, as are deemed necessary to convey to the invited bidder, whether he is a resident of this State, or not, the information that it will be necessary for him to have evidence of a license before his bid is considered.

SECTION 19. That any party aggrieved by any decision of the State Licensing Board for General Contractors shall have the right to seek review thereof by filing a petition within thirty (30) days from the finding made by said Board before any division of the Circuit Court of Pulaski County, Arkansas, in which said aggrieved party shall set out in what respect the adverse action of the Board complained of is erroneous and prejudicial, and shall request the court to review the record of the findings of said Board. Upon trial duly had, the record of the examination and hearing by the Board shall be reviewed by the Circuit Court, and at the conclusion thereof the court shall either uphold the action of the Board or shall direct the granting of the application for license denied, or the reinstatement of the license revoked, as the case may be from which an appeal may be taken either by the applicant or by the Board to the Supreme Court as in other cases.

SECTION 20. That if any Section, sentence or provision of this Act shall be held unconstitutional, such holding shall not affect the remainder of the Act not in itself unconstitutional.

SECTION 21. That all laws or parts of laws in conflict herewith be, and the same are hereby, repealed.

SECTION 22. It is hereby determined and declared to be a fact that the practice of general contracting in the State of Arkansas is in need of regulation; that due to unethical practices, contractors within the State are being

unduly penalized and are suffering irreparable injury, and this Act, being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage.

APPROVED: February 24, 1939.

ACT 217 of the Acts of the General Assembly of Arkansas for the Year 1945.

AN ACT to Amend Sections 7, 8, and 13 of Act 124 of the Acts of the General Assembly of the State of Arkansas for the Year 1939, Approved February 24, 1939, and for Other Purposes.

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That Section 7 of Act 124 of the Acts of the General Assembly of the State of Arkansas for the year 1939, approved February 24, 1939, be, and the same is hereby amended to read as follows:

"SECTION 7. That the Secretary shall keep a register of all applications for license showing for each the date of application, name, qualification, place of business, place of residence, and whether the license was granted or refused, as well as a complete transcript of the proceedings, including evidence submitted by applicants, licensees, the Board, or otherwise, at any hearing. The books and register of this Board, including transcripts of proceedings, shall be prima facie evidence of all matters recorded therein, and a certified copy of such books or register, including transcript of proceedings, under the seal of the Board, attested by its Secretary, shall be received in evidence in all courts of the State in lieu of the original. A roster showing the names and places of business and of residence of all licensed general contractors shall be prepared by the Secretary of the Board as soon as convenient, and not more than ninety (90) days after the Board shall have or-

ganized, and during the month of August of each succeeding year. Such roster shall be ordered printed by the Board and paid for out of the funds herein appropriated for the operation of this Act. On or before the first day of August of each year, the Board shall submit to the Governor a report of its transactions for the preceding year, and shall file with the Secretary of State a copy of such report, together with a complete statement of receipts and expenditures of the Board attested by the affidavit of the General Assembly of the State of Arkansas for the licensed general contractors."

SECTION 2. That Section 8 of Act 124 of the Acts of the General Assembly of the State of Arkansas for the year 1939, approved February 24, 1939, be, and the same is hereby amended to read as follows:

"SECTION 8. That any one, other than members selected by the Governor as hereinbefore provided, hereafter desiring to be licensed as a general contractor in this State shall make and file with the Board thirty (30) days prior to any regular or special meeting thereof, a written application on such form as may then be by the Board prescribed, for examination by the Board, said application to be accompanied by a certified check in the sum of Fifty Dollars ($50.00) payable to the Arkansas State Licensing Board for General Contractors. If said application complies with the Board's rules and regulations, then the applicant shall be entitled to an examination to determine his, their, or its qualifications. If the result of the examination of any applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to engage in general contracting in the State of Arkansas. Any person thus receiving a certificate of license from the Board shall forthwith have it recorded in the office of the Secretary of State, and the date of recording shall be evidenced thereon. Until the license is recorded, the holder thereof shall not exercise any of the rights or privileges therein

conferred, and in case such license is not recorded within sixty (60) days from the date of its issuance it shall become invalid. The Secretary of State shall be paid a fee of $1.00 for recording said certificate, and shall keep in a book to be provided by him for that purpose a complete list of certificates of license recorded by him, together with the date of each, and the date of recording. Any applicant failing to pass the examination prescribed by the Board shall be entitled to the refund of his, their or its fee accompanying the application. Any one failing to pass such examination may be re-examined at any regular meeting of the Board upon payment of regular fee."

The certificates of authority to engage in the business of general contracting in the State of Arkansas issued in the year 1945 shall expire June 30, 1946, and thereafter all certificates of authority issued shall expire the last day of June following the issuance or renewal, and shall become invalid on that date unless renewed. A fee of Fifty Dollars ($50.00), payable at the time of filing the application as hereinbefore provided, shall be assessed against each applicant and thereafter an annual license fee in the sum of Fifty Dollars ($50.00) shall be paid by each Licensee to defray the cost and expenses of the operation of this Act.

SECTION 3. That Section 13 of said Act 124 of the Acts of the General Assembly for the year 1939, be, and the same is hereby amended to read as follows:

"SECTION 13. That any person, firm or corporation not being duly authorized, who shall engage or attempt to engage in the business of general contracting in this State, except as provided for in this Act, and any person, firm or corporation presenting or attempting to file as their own the license certificate of another, or who shall give false or forged evidence of any kind to the Board, or to any member thereof, in obtaining a certificate of license, or who shall impersonate another, or who shall use an expired or revoked certificate or license shall be deemed

guilty of a misdemeanor, and shall be liable to a fine of not less than One Hundred Dollars ($100.00), nor more than Two Hundred Dollars ($200.00), for each offense, each day to constitute a separate offense." And provided further that no action may be brought either at law or in equity to enforce any provision of any contract entered into in violation of this Act.

SECTION 4. That all laws and parts of laws in conflict herewith are hereby repealed.

SECTION 5. Whereas, with the close of the present war a great revival in contracting in this State is anticipated, and with the increase in construction business a vast influx of contractors from other sections is anticipated. That it is vitally essential that the responsibility and experience of these contractors be known in order to prevent unfair competition and delay in construction of vitally needed facilities, therefore, this Act being necessary for the immediate preservation of the public peace, health and safety an emergency is hereby declared and this Act shall take effect and be in full force from and after its passage.

APPROVED: March 20, 1945.

PULASKI COUNTY CIRCUIT COURT

FIRST DIVISION

Friday, April 1, 1955

STATE OF ARKANSAS ..... *Plaintiff*

v. No. 52702

LESLIE MILLER, INC. ..... *Defendant*

JUDGMENT

On this day, this cause comes on to be heard, the State of Arkansas, appearing by Frank Holt, Prosecuting Attor-

ney within and for Pulaski County, Arkansas, and the defendant, Leslie Miller, Inc., appearing by its Attorney, Leffel Gentry; and both parties announcing ready for trial, the parties specifically waiving trial by jury and agreeing that the cause would be tried before the court upon the amended and substituted stipulation of facts entered into by the parties hereto; and from the information filed herein by Frank Holt, Prosecuting Attorney within and for Pulaski County, Arkansas, and in the name, by the authority, and on behalf of the State of Arkansas, the plea of not guilty to each count of the information, entered by Leffel Gentry, as attorney for the defendant, Leslie Miller, Inc., the stipulation entered into by the parties hereto, and the argument of counsel, and other matters and things before the Court, the Court doth ascertain and determine that the defendant is guilty as charged in both counts of the information filed in this cause by Frank Holt, Prosecuting Attorney within and for Pulaski County, Arkansas, and in the name, by the authority and on behalf of the State of Arkansas.

It is adjudged that the defendant, Leslie Miller, Inc., is guilty as charged and convicted on each count of the information herein.

It is further adjudged that the defendant's punishment is assessed at a fine of $100.00 and costs on Count I of said information and at a fine of $100.00 and costs on Count II of said information.

(s) William J. Kirby, Judge